REPORT OF THE

MISSOURI TASK FORCE ON GENDER AND JUSTICE

EXECUTIVE SUMMARY

Submitted to:
The Executive Council of the
Missouri Judicial Conference

Chief Justice Edward D. Robertson, Jr., Chair

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EXECUTIVE SUMMARY

PREAMBLE

The Missouri Task Force on Gender and Justice was created by Resolution of the Executive Council of the Missouri Judicial Conference. Its members were appointed by the Chief Justice of the Missouri Supreme Court in February, 1990. The Resolution charged the Task Force with studying "the organization, rules, methods of procedure, and practice of the judicial system of the State of Missouri to determine whether gender bias exists." The Task Force was instructed to issue "a report containing [its] findings and recommendations and provide a plan for the education of the bench, bar, and public with respect to its findings and recommendations."

Missouri's Task Force is one of 33 established in other states, the District of Columbia, Puerto Rico, and the Ninth Circuit Court of Appeals. The Task Force examined reports issued by some of the other task forces for suggested areas of concern and methodology for its study.

Members of Missouri's Task Force were diverse and included judges, attorneys and educators from all parts of the state.

The Task Force studied five areas: domestic violence, family law, criminal justice, treatment of persons in and by the courts, and judicial selection. Under the supervision of a statistical expert, the Task Force conducted a statewide survey of attorneys, judges and court personnel. Its objective with respect to the surveys was to assess the perceptions and recent experiences of the respondents concerning possible gender bias in areas of the court system with which the respondents were most familiar. Recipients were asked to complete only those sections of the questionnaire about which they had knowledge or experience within the last five years. The response rate was 17% for attorneys, 42% for judges, and 20% for court personnel.

The survey results enabled the Task Force to draw conclusions about the attitudes, observations and experiences of participants in the legal process and to contrast the views of judges and male attorneys with those of female attorneys. A statistical analysis of the data received was performed by a statistical expert who is an assistant professor and a fellow of the Public Policy Research Center at the University of Missouri - St. Louis. An external review of the expert's survey methodology and report was conducted by the director of the Office of Social and Economic Data Analysis at the University of Missouri - Columbia.

The Task Force also conducted puhlic hearings in St. Louis, Kansas City, Springfield, Columbia, Cape Girardeau and Kirksville. Approximately 150 judges, attorneys, litigants, and representatives of organizations associated with the court system testified at these public hearings. The anecdotal material received by the Task Force at the public hearings and in survey comments provided a human perspective to complement the empirical, quantitative findings. From these sources the Task Force was able to pinpoint many of the ways bias manifests itself in Missouri's judicial system.

In addition, the members of the five Task Force committees read current literature pertaining to the subjects being investigated, and reviewed relevant appellate decisions. A separate questionnaire regarding court rules, policies and procedures was sent to the 44 circuit courts and three appellate court districts. Members of the Missouri Nonpartisan Court Plan appellate and circuit judicial nominating commissions also received a separate questionnaire.

Through this fact-gathering process, the Task Force discovered that in virtually every area identified in other states as presenting gender-related obstacles to the administration of justice, substantial gains have been made in Missouri. For instance, Missouri has adopted an impressively comprehensive Adult Abuse statute; courts are increasingly recognizing the economic contribution of the homemaker spouse when distributing marital assets; and judges, attorneys and court personnel reported a marked decrease in improper, sexist conduct in the courts.

Although encouraged by these gains, the Task Force concludes that improvement is still needed in the areas of domestic violence, dissolution of marriage, child custody, sentencing, court access, conduct in the courtroom environment, treatment of court personnel, and judicial selection. The Task Force Report emphasizes the areas where improvement is needed in order to raise the consciousness of the readers. The many recommendations for change, further study, and continued monitoring contained in this Final Report will provide the opportunity for attorneys and judges to demonstrate their commitment to eliminating gender bias from the administration of justice in Missouri.

Although the Task Force was charged only with examining gender bias in the court system, as the study progressed, it became evident that the effects of gender and race on the administration of justice are often intertwined. The Task Force decided to address the effect of racial bias when it was raised and to record and report any evidence of racial bias produced by the study. Testimony of racial bias was not solicited at the public hearings, but the survey included a limited number of questions on the subject of racial bias. From the information the Task Force received, it concludes that there is significant evidence to support the establishment of a separate task force to study race and justice issues and to work to eliminate racial bias.

I. DOMESTIC VIOLENCE

Missouri took an important step in responding to the growing problem of domestic violence by enacting its Adult Abuse laws. These statutes have been nationally recognized as being both progressive and comprehensive. The Adult Abuse laws provide victims of domestic violence with access to court-ordered protection while at the same time ensuring that an alleged abuser's due process rights are preserved.

The Task Force heard testimony from law enforcement officials, prosecuting attorneys, legal aid attorneys, and representatives of battered women's shelters concerning the courts' administration of the Adult Abuse laws. Although officials within the system have a genuine desire to provide victims with protection and assistance, both officials and victims sometimes find the manner in which the Adult Abuse laws are administered to be frustrating and ineffective. Much of that frustration stems from a lack of information and education, rather than from statutory inadequacies. The system's performance could be enhanced by providing education and training to officials and by coordinating efforts of officials within the system so that victims receive more complete information about available services.

Domestic violence cases in Missouri have a high rate of dismissal. Slightly more than half of all petitions for orders of protection filed under Missouri's Adult Abuse Act in 1991 were eventually dismissed. Officials within the system testified about their perception that most prosecutions under the Adult Abuse laws result in dismissals because victims fail to pursue their rights. The high dismissal rate of domestic violence cases causes some officials to assign such cases low priority and devote fewer resources to them.

The Task Force recognizes a need for education and training to help law enforcement personnel, court clerks, judges, and prosecutors understand the pressures surrounding domestic violence and the psychological trauma that accompanies it. Understanding and enforcement of the adult abuse laws tends to be more advanced in urban areas and larger towns so that the need for such programs is greater in rural areas. The goal of such educational programs should be to help officials identify why victims do not always act in their own best interest and often hesitate to proceed with prosecution. Educational programs should help officials understand that victims are often financially dependent upon their abusers, isolated by the abuser from family and friends, and unable to seek alternatives because of fear or lack of information on how to pursue assistance.

In some areas of the state, court clerks were reported to be helpful to victims in filing for protection orders, while in other areas they were impatient and uninformed. Training programs should provide court clerks in all areas of the state with the information to assist victims so that victims will not be so intimidated by the system that they are discouraged from seeking relief.

Prosecutors testified that they would welcome additional and continual domestic violence training to increase their effectiveness in dealing with victims. Prosecutors are encouraged to increase the priority of domestic violence cases by prosecuting in state courts rather than municipal courts and by adopting a policy of not dismissing criminal domestic violence prosecutions.

Judges in Missouri generally grant orders of protection where appropriate and give equal consideration to the testimony of both the victim and the alleged abuser. Judges on occasion, however, have made inappropriate comments, lectured victims, and granted mutual orders of protection which contradict statutory provisions.

Victims would be served better by the system if there were more coordination between prosecutors and social services so that prosecutors would have the information necessary to direct victims to the available services. The Task Force also recognizes the need in many counties to create or expand organized support services available to victims of domestic violence.

Misuse of Missouri's Adult Abuse laws does exist. The perception of spouses against whom orders of protection are sought is that a full and complete hearing on the issues is not provided before the permanent order is entered. Sometimes the laws are used by pro se litigants and attorneys to gain an early advantage in dissolution proceedings or to modify custody orders. This improper use of the Adult Abuse laws contributes to the frustration and ineffectiveness that sometimes surrounds the administration of these laws.

In general, a lack of understanding and poor dissemination of information makes the administration of the Adult Abuse laws in Missouri less successful than it could be. Officials within the system lack a comprehensive understanding of the psychological and societal pressures victims face. As a result, domestic violence cases receive low priority within the system and victims are sometimes treated with insensitivity. Lack of education about domestic violence leads officials to misinterpret a victim's actions as abuse of the system when in many cases the victim's behavior may stem from being intimidated or overwhelmed by the system. Education and training programs, when combined with increased coordination of individual efforts within the system, will increase the effectiveness of the system and improve the protection and assistance provided to victims of domestic violence.

II. FAMILY LAW

The Missouri courts are charged with the responsibility of sorting out the economic pieces and the future composition of the disintegrated family. It is by order of the court that a marriage is dissolved and the husband's and wife's prospective obligations to one another and to their children are defined. The areas of dissolution and child custody are those in which the general population is most likely to have intimate contact with the judicial system and, hence, the greatest opportunity to observe and judge the fairness of the courts' operations. The courts have an obligation to ensure litigants fair and effective access to the judicial system. The courts must also render decisions grounded in the economic and psychological realities of the family unit which are unaffected by gender-based stereotypes. The courts' determinations of family law issues are not only of elemental human importance to the women, men, and children who seek to enforce their rights, but also a critical ingredient in the public's perception of the courts.

In many cases women have less ability than men to retain counsel and adopt effective litigation strategies in family law cases. The husband usually has more ready access to the family's liquid

assets and to a higher income, which can be used for the retention of counsel and enforcement of rights. Courts have broad discretion in balancing the parties' access to counsel by requiring the economically dominant spouse to apply family resources to both parties' litigation costs. Adequate awards of attorneys' fees, however, are usually not made early in the litigation, which creates difficulty for the economically dependent spouse, usually the woman. The result is that women are forced to accept settlements contrary to their interests because they do not have the resources to pursue litigation.

More often than is desirable, Missouri trial courts award inadequate maintenance to the economically dependent spouse of a long-term marriage. The amount of maintenance awarded and the duration of the award is too small to enable the economically dependent spouse, usually the woman, to maintain a standard of living near that enjoyed by the ex-spouse after the dissolution. Although trial judges feel they are being fair in the awards made, they do not understand the consequences of such awards, An award of several years' duration, after years out of the work force, does not permit the homemaker to maintain the standard of living of the parties during the marriage or, if there must be a reduction in the standard of living, cause the reduction to be shared by both parties. Even if a displaced homemaker is retrained, the homemaker will never have the marketable skills of the working spouse. In cases where inequitable maintenance awards have been appealed and the working spouse had the ability to pay, the appellate courts have consistently reversed the trial courts' decisions.

In dividing the marital property, courts are to assess the contribution of each spouse to the accumulation of the marital property, including the contribution of a homemaker spouse, and divide the property in such proportions as are deemed just. Although Missouri courts increasingly recognize the contributions of the homemaker spouse, some courts still give greater weight to financial contributions.

For the most part, the child support guidelines adopted by the State of Missouri are followed by trial courts, although some instances of inappropriate deviation were reported. Courts sometimes fail to consider the child care costs of the custodial parent in ordering child care payments.

Missouri long ago abandoned the statutory concept of the "tender years doctrine," which favored mothers over fathers in granting custody of the children. Nevertheless, when custody is in dispute, some judges continue to award custody based on a preference for mothers. Missouri courts generally grant joint legal and physical custody when it is agreed to by the parties. A presumption favoring the primary caretaker during the marriage would establish a gender-neutral standard.

Both men and women who testified before the Task Force felt courts do not enforce orders for visitation, child support, or custody. Men are discouraged by attorneys from pursuing custody; women are discouraged from raising issues of child or adult abuse which may affect visitation rights.

Many judges view family law as lower status work and as an undesirable assignment. Because of this negative attitude, judges sometimes give family law cases low priority. In some areas of the state, domestic assignments are rotated frequently, sometimes as often as every six months, which creates a lack of continuity of judges in domestic cases. The creation of a Family Court provides the most all-encompassing solution to these problems. A Family Court would address all matters concerning the dissolution of marriages, division of property, child custody, domestic violence, adoptions and juvenile matters.

III. CRIMINAL JUSTICE

A consensus of the survey respondents and the public hearing witnesses is that female criminal defendants frequently receive more lenient treatment than male criminal defendants in all phases

of criminal proceedings. There are some offenses, however, for which women receive harsher treatment than men. Although there was almost universal agreement that disparity exists, the more difficult question facing the Task Force was whether the different treatment results from sexual stereotyping or is instead based on legitimate factual differences. No clear conclusion can be reached, in part due to the nature of the criminal system. Prosecutors are required to exercise significant discretion in determining whether to prosecute and in plea negotiations, and judges use discretion in setting bail and in sentencing. Such discretion should be exercised based on the facts of each case and the circumstances of each defendant.

Statistics available to the Task Force revealed the crime charged, the sex of the defendant, and the sentence received. To analyze whether prosecutorial and each judicial decision are gender neutral, additional statistics would need to be compiled by appropriate agencies, which further identify each defendant's personal circumstances and the nature of the offense.

The majority of judges and attorneys believed that females receive more lenient treatment than males in the areas of arrest, bond, prosecution and sentencing, particularly when charged with non-violent crimes. Statistics from the Department of Corrections indicate that the mean or average sentence received by women is shorter than the mean sentence received by men in over 75% of the offense categories. In addition, women serve a shorter percentage of their sentences than men before their release in 70% of the offense categories. Women charged with offenses viewed as violent or unacceptable for women, however, receive longer sentences than men and are required to serve a greater percentage of their sentence. This disparity appears to be decreasing in that the trend is toward more equal sentencing of men and women, except when the woman is pregnant. Increased awareness of gender stereotypes among judges, prosecutors, defense attorneys and others participating in the system would lead to discretionary decisions being based upon legitimate factual distinctions.

Although the Department of Corrections is not within the jurisdiction of the courts, incarceration and parole are an integral part of the criminal justice process and were examined by the Task Force. The female inmate population in Missouri prisons increased 81% compared to 43% for males over the last five years, yet only 6% of all inmates are female. Fewer female inmates translates to fewer prison facilities across the state. Because the two exclusively female facilities are located in central Missouri, it is more likely that female inmates will be from other areas of the state and will have difficulty maintaining family contact. Female inmates, however, benefit from better programs to assist in maintaining family ties than male inmates. The male inmates have an advantage over females in educational and vocational opportunities. The scanty educational and vocational training for women defeats the goals of rehabilitation and decreases the likelihood of success on probation.

Another area where there is the potential for gender bias is in the prosecution of crimes where the victims are predominantly female, such as rape and sexual assault. Prosecutions of these offenses are susceptible to sexual stereotyping and gender-biased conduct. The victims often do not report the crimes and are reluctant to prosecute, because they fear that prosecuting the crime will be as emotionally damaging as enduring the crime itself. Although Missouri's statutes are gender neutral and spouses are now protected from rape, sodomy and sexual abuse in the first degree, there was evidence that prosecutors, defense attorneys and judges do not always comply with the statutory provisions which protect the victim. Education of judges and attorneys and the utilization of victims' advocates have improved the prosecutorial process and conviction rates in other states and should be promoted in Missouri.

IV. TREATMENT OF JURORS, WITNESSES, LITIGANTS, ATTORNEYS, JUDGES AND COURT PERSONNEL IN THE COURTS

The Task Force examined the courtroom environment to determine if any of the participants in court proceedings perceived biased behavior. The confidence of jurors, witnesses, and litigants in the judicial system and their respect for the court are determined in large part by the absence or presence of decorum and professionalism in the courtroom. "The treatment accorded attorneys by judges, other attorneys, and court personnel obviously plays a significant role in an attorney's success or failure in the courtroom and affects a client's confidence in an attorney's abilities. The integrity of the judicial system rests in part on the public perception that the judiciary exercises its duties with fairness, impartiality, and compassion."[1]

Information received by the Task Force suggests that instances of inappropriate courtroom conduct toward jurors, litigants, witnesses, attorneys, and judges occur. Public hearing witnesses expressed the belief that conditions have improved in recent years in that overt acts of bias have decreased. It was reported, however, that biased conduct exists now in more subtle forms which are less easy to detect.

There is a significant difference between the perceptions of female attorneys and the perceptions of judges and male attorneys as to the prevalence of gender-biased conduct. Specifically:

- 37% of female attorneys reported the outcome of cases is affected by bias against female attorneys; compared with 9% of male attorneys and 0% of judges. Only 2% of female attorneys, judges and male attorneys reported the outcome of cases is affected by bias against male attorneys.

- 50% of female attorneys reported judges assign more credibility to the arguments of male attorneys; compared with 21% of male attorneys and 0% of judges. Only 2% of female attorneys reported judges assign more credibility to the arguments of female attorneys; compared with 1% of judges and male attorneys.

- 39% of female attorneys reported judges are more likely to interrupt the presentation of female attorneys; compared with 7% of male attorneys and 0% of judges. Only 2% of female attorneys reported judges are more likely to interrupt the presentation of male attorneys; compared with 7% of male attorneys and 2% of judges.

- 47% of female attorneys reported that female judges and female attorneys are addressed by first names or familiar terms; compared with 20% of male attorneys and 22% of judges.

- 42% of female attorneys had overheard remarks or jokes demeaning to women by judges; compared with 16% of male attorneys and 6% of judges.

- 53% of female attorneys had overheard remarks or jokes demeaning to women by attorneys; compared with 23% of male attorneys and 12% of judges.

[1] Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System, 8 Ga. St. U. L. Rev. 539, 702 (1992) (citations omitted).

- 41% of female attorneys had heard comments about the physical appearance of women in the courtroom made by judges; compared with 21% of male attorneys and 17% of judges.

- 57% of female attorneys had overheard comments about the physical appearance of women in the courtroom made by attorneys; compared with 39% of male attorneys and 23% of judges.

These survey results highlight the need for judges and attorneys of both genders to develop sensitivity to the perceptions of others. Amending the Missouri Code of Judicial Conduct with a canon and the Missouri Rules of Professional Conduct with a rule prohibiting language or conduct manifesting bias or prejudice would set the standard for judicial and attorney conduct, underscore the importance of eliminating bias and prejudice, and indicate to the public the importance with which the judicial system considers the issue. A handbook for courtroom conduct could be an additional resource that is readily available and easily understood.

Examination of the data shows that current jury selection methods warrant further review for possible gender inequities. The language in some statutes, rules and court documents is not gender neutral and should be modified. The need for adequate child care for children of jurors, witnesses, litigants, and court personnel was recognized.

The Task Force received a small, but still disturbing, number of reports of inappropriate or demeaning conduct toward court personnel, primarily female employees. Examples of the type of conduct reported are references to the employee as "dollie" or "sweetie," rude jokes, and conversations with sexual overtones. Twenty-seven percent of female employees responding to the survey and 4% of male respondents reported at least one experience of being subjected to unwanted verbal or physical sexual advances or harassment.

The Supreme Court has adopted Administrative Rule 7 for the employees of the circuit courts and a new policy manual, Policy No. C-7, for its own employees at the Supreme Court. Both Administrative Rule 7 and Policy No. C-7 provide excellent examples of gender-neutral policies and procedures for court personnel, including grievance procedures for sexual harassment and family leave policies. Uniform policies and procedures should be promulgated for the remaining employees of the court system, including those who are paid by the counties. Additionally, many employees are not aware of the existing policies available to protect them and should be educated as to their rights. Gender-neutral hiring and promotional standards are essential to a fair work environment. Objective job performance and salary reviews will ensure that promotion and compensation are based upon merit and build employee confidence in the system.

Any and all biased treatment which occurs in the courts or by the courts is unacceptable, because the courts must be held to the highest standard. Fairness and public confidence in the judicial system demands perceived, as well as actual, impartiality.

V. JUDICIAL SELECTION

Missouri has a long and distinguished history of advancing women in the legal profession. Missouri was the first state to admit women to law school and the second state to admit women to the bar. It was not until 1954, however, that the first woman judge was elected, and not until 1979 that a woman judge was appointed under Missouri's Non-Partisan Court Plan. In 1987, the first woman was appointed to one of the Missouri Courts of Appeal and in 1988, the first woman was appointed to the Supreme Court of Missouri. As of January 1, 1993, 27 of the 342 judges in

the state were women. This representation (7.9%) is lower than the national average for both elected and appointed judges. Approximately 20% of all lawyers and 53% of all citizens in Missouri are women.

The majority of judges, attorneys, and court personnel responding to the Task Force survey expressed the strong belief that gender diversity on the bench is desirable for the fair administration of justice. Whether and how gender bias might affect judicial selection in Missouri is important to public confidence in an unbiased judiciary and to equal opportunity for qualified applicants.

Some survey respondents commented that the electoral process of selecting trial judges, used in Missouri counties outside Kansas City and St. Louis, is unfair to women because most openings occur prior to the end of a term and are filled by the governor, who appoints an interim replacement. The incumbent then has the advantage in the next election. The number of women appointed to these interim judicial positions during the last two decades was very small--5 out of 102 appointments since 1976.

Although the Non-Partisan Court Plan, used to select appellate judges and trial judges in the major metropolitan areas of Missouri, was designed to eliminate partisan considerations and focus on the merit of the candidates, it too received much criticism from survey respondents. The vast majority of female and male attorneys and judges felt that the gender of applicants affects the nomination and appointment processes. The judges and male attorneys believed that female and minority applicants are given preference in the selection process; half of the female attorneys agreed this is true when the court does not already have a woman or minority on it. Once one female or racial minority becomes a member of such court, most female attorneys felt another would not be appointed; one-third of the judges and male attorneys agreed.

The training of Missouri Plan nominating commissioners who interview candidates and submit three names to the governor, is informal and irregular at best, non-existent at worst. No formal training is provided for the commissioners; no uniform procedures are articulated; no uniform application forms are utilized; no records are maintained; and no rules of ethics govern the conduct of the commissioners. The process allows opportunities for the personal biases of the commissioners to enter the nominating process. In particular, that individual interviews of candidates frequently lead to inappropriate questions being asked. There is a need to increase gender and racial diversity on the nominating commissions, through rule or statute, as has been done in other states.

VI. INSTITUTIONALIZING REFORM: IMPLEMENTING THE TASK FORCE RECOMMENDATIONS

The Task Force's examination of the court system in Missouri has revealed a high level of understanding among the judiciary, the bar, and court constituent groups of the nature of gender bias in the courts, as well as a genuine commitment to equal justice and opportunity. Throughout the Report, the Task Force has endeavored to illustrate how that commitment has, over the past decade and more, translated into material and tangible progress in ensuring that justice is administered evenhandedly and that all court participants are accorded dignity and respect, irrespective of gender. The Task Force has also emphasized that, in many areas, good intentions notwithstanding, the promise of reform has not been fulfilled and that material obstacles to the administration of justice remain.

In its original directive from Chief Justice Blackmar, the Task Force was instructed to issue a report containing "its findings and recommendations" and "provide a plan for the education of the bench, bar and public with respect to its findings and recommendations." Throughout the Report, the Task Force has offered recommendations in the particular substantive areas it studied and

identified areas in which an institutional commitment to reform by the courts and constituent groups would have the most enduring effect.

A. Education and Leadership: The Role of The Missouri Bar

The Task Force took seriously its charge to "provide a plan for the education of the bench, bar and public." Every topic the Task Force addressed in the Report identifies "education" as a principal component of reform. In reflecting on how the particular recommendations for education could be translated into the practical "plan" the Executive Council of the Missouri Judicial Conference requested, the Task Force has concluded that, for purposes of remedying gender-based impediments to the administration of justice, "education" is in many cases interchangeable with principles of leadership.

The organized bar in Missouri -- The Missouri Bar, the women's bar associations, the minority bar associations, and the many other local and statewide organizations — has a long and distinguished history of providing leadership in many areas of court improvement. The organized bar is uniquely well suited to perform this function because, in approaching court improvement, it integrates all areas of the legal system -- the judiciary, practicing attorneys, law schools and legal academics, and community leaders. Like virtually every project intended to improve the administration of justice, fulfilling the promise of reform on the subject of gender and justice will require the participation of and commitment from each of these constituent groups.

It appears to the Task Force that existing apparatus and committees formed by Missouri's organized bar provide a superior forum for reducing to practical application a large number of the recommendations contained in the Report. The organized bar has a historical commitment to examining domestic violence, family law, criminal law, legal ethics, court administration, and judicial selection. Most of the state's major bar associations have standing committees and distinct subcommittees on virtually all of these topics. It is the Task Force's view that the specialized professional experience that bar committee members can bring to bear will make a distinctive contribution toward practical solutions to problems of gender and justice in the courts.

B. Creation of a Family Court

As part of its discussions of Family and Domestic Violence law, the Task Force has recommended the creation of a Family Court. No single recommendation made by the Task Force can, in the Task Force's view, if followed, have a more profound practical effect on achieving fairness and equality between men and women in the administration of these laws that are especially susceptible to gender bias. Creation of such a court will, in the first instance, be symbolic of the court system's understanding of the unique role it plays as arbiter of family related matters. On a practical level, such a court ideally would employ a specialized judiciary committed to understanding the complex factors affecting the administration of family and domestic violence laws.

C. Legal Services for the Indigent

Access to the courts and the availability of legal services for women and men has been determined by the Task Force to be an indispensable component of reform. The Task Force concurs with the Minnesota Supreme Court Task Force for Gender Fairness in the Courts, which observed in its 1989 report that "[t]he question of access is crucial to any meaningful inquiry into gender fairness in the courts. If women and men do not have an equal opportunity to seek relief from the courts, the fairness of the entire system is undermined."

In examining the issue of whether such access is denied along gender lines, the Task Force has determined that, among the low-income population, a grossly disproportionate number of women seek but lack the financial resources to obtain counsel in family law, domestic violence and other legal matters and that the inability to obtain counsel affects women more severely than men. As a result, the Task Force has recommended that "state resources should be made available for the funding of legal representation for poor people in family law and domestic violence matters."

D. Increased Diversity in the Judiciary

The need for increased diversity in the judiciary is another indispensable component of reform. The Task Force concludes that determining how gender bias may affect judicial selection and taking steps to avoid such bias are critical to the administration of justice by Missouri's courts in two major respects. The first is public perception and trust that the judiciary is unbiased. The second is equality of opportunity for qualified applicants who seek judicial office. The Task Force proposes a number of reforms in both the elective and appointive processes to reduce the potential for gender bias, create a more level playing field for the advancement of women to the judiciary, and better serve the ultimate objective of equal justice under the law.

E. Ethical Rules and Guides to Conduct

In a number of instances, the Task Force concludes that judges, attorneys, court personnel, and judicial nominating commissioners would be greatly aided by clearer articulations of rules of conduct regarding gender bias. Some of those proposed rules require reforms to the Missouri Code of Judicial Conduct and the Missouri Rules of Professional Conduct. Others require the adoption of new rules of conduct. In addition, and prior to formal rule changes, the Task Force recommends that the Missouri Supreme Court adopt a Missouri Courtroom Conduct Handbook similar to that recently adopted by other states such as Florida. The handbook would provide a uniform frame of reference for identifying gender bias since conduct is often perceived differently by individuals.

F. Task Force For Implementation of the Task Force Recommendations

Many of the Task Force recommendations can be implemented, as indicated above, through the leadership and education efforts of the organized bar. Others may require a task force to assist the Supreme Court with implementation of the recommendations. The Task Force urges the Chief Justice and the Executive Council of the Missouri Judicial Conference to undertake the implementation process as quickly as possible.

G. Task Force on Race and Justice

The Task Force recommends that the Missouri Supreme Court establish a Task Force on Race and Justice to conduct a study of whether racial bias exists in the administration of justice in Missouri, and, if so, what steps should be taken to remedy it. Although the Task Force did not undertake a full investigation of racial issues, it is hoped that the limited information collected by the body may provide some assistance to those who would undertake such a study. The Task Force is aware that a request to convene a Task Force on Race and Justice has already been made by several local bar associations and supports that request.

CONCLUSION

In an era when social problems are so commonly distinguished by their seeming intractability, it is the Task Force's committed view that solutions to gender bias in Missouri's courts are at hand. As described in detail in the body of the report, leadership and education are the primary components to fulfilling the promise of reform. These, when combined with other specific recommendations, will move Missouri courts closer to their constitutional mandate:

> **That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.**[2]

[2]Missouri Constitution of 1945, Art. 1, § 14.

RECOMMENDATIONS

OF THE

MISSOURI TASK FORCE ON GENDER AND JUSTICE

A. DOMESTIC VIOLENCE

1. The Missouri Supreme Court should encourage judges, prosecutors, court personnel, and law enforcement officers to give a higher priority to civil actions and criminal prosecutions involving domestic violence.

2. The Missouri Supreme Court should encourage the Attorney General, The Missouri Bar, and local bar associations to provide more frequent and more effective training on all aspects of domestic violence and its prevention for judges, prosecutors, court personnel, and law enforcement officers. The devotion of additional resources to such training would produce significant improvements.

3. The Missouri Supreme Court should educate judges that the law does not permit the issuance of mutual orders of protection in cases where only one person has requested an order even if there is evidence of mutual abuse.

4. The Missouri Supreme Court should provide mandatory educational programs for judges devoted to problems regarding Adult Abuse Act enforcement and domestic violence prosecution, including the importance of requiring counseling for offenders. The Court also should provide assistance to the courts in making appropriate services available.

5. The Missouri Supreme Court should provide mandatory educational programs for judges regarding criminal sentencing of domestic violence offenders and the range of remedies provided in the Adult Abuse Act.

6. The Missouri Supreme Court should educate judges and court personnel regarding possible misuse of adult abuse proceedings, especially when divorce proceedings are in process. Judges should be made aware of their ability to impose sanctions under Rule 55.03 against attorneys who encourage the filing of groundless petitions for protection orders to gain an advantage in divorce proceedings.

7. The Missouri Supreme Court should initiate studies by each circuit court of physical facilities and practices to determine whether physical changes or changes in court process are needed to assure the safety and dignity of parties involved in domestic violence proceedings.

8. The Missouri Bar should work with the Attorney General, law schools, prosecuting attorneys, and civic organizations to encourage the creation of victim assistance programs that provide indigents access to judicial remedies they are otherwise denied and to develop counseling programs for offenders.

9. The Missouri Bar should provide educational programs on adult abuse for judges, prosecutors, court personnel, and law enforcement officials, emphasizing the role of each of these parties in the elimination of adult abuse.

10. The Missouri Bar should advocate educational programs for prosecuting attorneys devoted to problems of domestic violence prosecution, including consideration of a policy that charges not be dismissed solely because the victim requests that charges be dismissed. Prosecutors also should be encouraged to proceed with as few continuances as possible.

11. The Missouri Bar should promote legislation to address incidents of abusers subject to orders of protection who "stalk" victims of adult abuse.

B. FAMILY LAW

1. The Missouri Supreme Court should promote the creation of a Family Court with jurisdiction over all family law matters, including domestic violence matters.

2. The Missouri Supreme Court should provide mandatory educational programs for judges that focus on the importance of interim awards of attorneys' fees (PDL) to economically dependent spouses during the pendency of litigation and on the importance of sufficient final attorneys' fees awards.

3. The Missouri Supreme Court should provide mandatory educational programs for judges to increase sensitivity to significant family law issues, such as the need for indefinite maintenance for economically dependent spouses who have not been employed in the paid labor market, except where the evidence clearly establishes that the need for maintenance will terminate at an ascertainable time; the legitimacy of a primary caretaker presumption; stereotypes about behavior of men and women as parents, including the tender years presumption; the significance of spousal abuse to child custody and visitation awards; family violence and its effect on children; child development and the psychological impact of dissolution; and substance abuse.

4. The Missouri Supreme Court should encourage the use of mediation in child custody and visitation disputes as provided for in Supreme Court Rule 88, except in cases involving adult or child abuse, and the Court should consider establishing a pilot program in the State as a model for the implementation of Rule 88.

5. The Missouri Bar should work with the Missouri Supreme Court to provide educational programs for judges, attorneys, and court personnel in family law issues, in particular issues concerning the economic consequences of dissolution on spouses who are economically dependent during a long marriage.

6. The Missouri Bar should work with the Missouri Supreme Court to develop mediation training for interested attorneys and judges.

7. The Missouri Bar should seek sources of funding for delivery of legal services to indigent litigants seeking enforcement of family law rights.

8. The Missouri Bar should promote legislation to establish a presumption that, where one parent has served as primary custodian of children during marriage, that parent should receive primary physical custody upon dissolution of the marriage.

9. The Missouri Bar should promote legislation to establish a public policy of this State that parties have equal access to the courts and that PDL awards of counsel fees and costs of experts and investigators should be made in amounts appropriate to the duration and complexity of the case and sufficient to enable both parties to pursue litigation; to establish a standard that PDL maintenance and child support should maintain the status quo of the parties to the extent feasible; to make the homemaker's lifetime reduced earning capacity an express factor to be considered in the award of maintenance; to clarify that limited duration maintenance is permitted only when a known event will change the circumstances of the parties; and to clarify that the standard of living of the parties during the marriage is the standard by which the adequacy of the maintenance award should be judged and, if a reduction in standard of living is required, it should be shared by both parties.

C. CRIMINAL JUSTICE

1. The Missouri Supreme Court should direct the courts and encourage state and local authorities to collect and compile data regarding male and female offenders at all stages throughout the criminal justice system. The Missouri Supreme Court should direct the courts and encourage prosecutors, local authorities, and the Department of Corrections to maintain statistics concerning the handling of sexual assault and rape cases (including charging decisions, prosecution rates, conviction rates, sentencing decisions, and probation and parole decisions) and provide for the annual collection and compilation of the data.

2. The Missouri Supreme Court should undertake with The Missouri Bar and other bar associations a study of arrest, prosecution, sentencing, and incarceration of female and male offenders; a study of the handling of sexual assault and rape cases to monitor whether the cases are being seriously pursued and whether convicted offenders are appropriately punished and treated; and a study to determine whether men and women receive equivalent treatment in jurisdictions that do not have available jail facilities for females.

3. The Missouri Supreme Court should provide educational programs for judges to increase sensitivity to gender bias in the various stages of the criminal process. The Missouri Supreme Court should require mandatory education for judges on the full range of sentencing choices, including alternatives to incarceration and treatment for substance abuse.

4. The Missouri Supreme Court should require mandatory education for judges concerning sexual assault, spousal assault and rape, acquaintance rape, and rape trauma syndrome, and it should encourage similar education for police and prosecutors. The Missouri Supreme Court should provide educational programs for judges regarding gender stereotypes and rape myths that may be employed in the trial of sexual offenses, consent defense, and the Missouri rape shield statute.

5. The Missouri Supreme Court and The Missouri Bar should encourage the Department of Corrections to establish correctional facilities for women in locations close to the counties with the largest populations of female offenders to enable ongoing contact between female prisoners and their children.

6. The Missouri Supreme Court and The Missouri Bar should encourage the Department of Corrections to institute and fund programs facilitating regular contact between incarcerated parents and their minor children on an equivalent basis to male and female inmates at all state correctional facilities. Local correctional authorities should be encouraged to establish community-based alternative sentencing programs that permit non-violent offenders and their children to have regular contact.

7. The Missouri Supreme Court and The Missouri Bar should encourage the Department of Corrections and local correctional authorities to provide educational, vocational, and rehabilitation programs for gainful employment on an equivalent basis to male and female inmates and should not be based upon stereotypic notions of appropriate "men's work" and "women's work." The Missouri Supreme Court should encourage the Department of Corrections and local correctional authorities to provide physical and medical resources directed to meet the special needs of both male and female inmates.

8. The Missouri Supreme Court should convene a task force to conduct a study of the juvenile justice system in Missouri. The task force should be comprised of experts from the Juvenile Court, Division of Youth Services, Division of Family Services, and other appropriate agencies and organizations to facilitate an informed and critical review of the role of gender and race in the treatment afforded to youth in the juvenile justice system.

9. The Missouri Bar should undertake with other bar associations and the Missouri Supreme Court a more in-depth study of the criminal justice system and the impact on male and female offenders.

10. The Missouri Bar should develop educational programs for judges, prosecuting attorneys, and criminal defense attorneys on specific areas of criminal law, including rape and sexual assault. These programs should include filing standards for sexual assault and rape cases; technical skills for prosecuting such cases against strangers, acquaintances, and intimate partners of the victims; and the use of the rape shield law.

11. The Missouri Bar should encourage legislation to establish specialized prosecution units that permit victims to deal with one trained prosecutor in sexual assault and rape cases. It also should establish a public policy that law enforcement officers and prosecutors pursue sexual offenses committed by a spouse, intimate partner, or acquaintance with the same seriousness given to violent crimes committed by a stranger.

12. The Missouri Bar should encourage the Governor and the Missouri Department of Corrections to conduct a review of sentences of offenders convicted of homicide prior to the adoption of § 563.033 to determine if appropriate consideration was given at trial or in parole proceedings to evidence of battered spouse syndrome as a mitigating factor or defense.

D. TREATMENT OF JURORS, LITIGANTS, WITNESSES, ATTORNEYS, AND JUDGES IN THE COURTS

1. The Missouri Supreme Court should issue an Administrative Order that gender biased behavior in the court environment by the bench, bar, or court personnel is unprofessional and should be corrected.

2. The Missouri Supreme Court should develop and require regular training for judicial and court personnel on gender bias, sexual harassment, and the importance of gender neutral language. It should also direct circuit clerks and court administrators to provide education on such issues for all court personnel.

3. The Missouri Supreme Court should encourage judges to monitor gender biased behavior in chambers, courtrooms, and administrative areas and to take appropriate steps to correct lawyers, witnesses, litigants, and court personnel who engage in gender biased conduct. The Missouri Supreme Court should amend the Missouri Code of Judicial Conduct to include Canon 3(B) (5) and (6) of the 1990 A.B.A. Model Code of Judicial Conduct:

   (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

   (6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.[3]

4. The Missouri Supreme Court should amend the Missouri Rules of Professional Conduct to include a Disciplinary Rule similar to the following:

   In representing a client, a member of the bar shall refrain from engaging in conduct that exhibits or is intended to appeal to or engender bias or prejudice against a person on account of that person's sex, race, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that bias is directed to other counsel, court personnel, witnesses, parties, jurors, judges, judicial officers, or any other participants.

[3] L. Milord, The Development of the A.B.A. Judicial Code 74-75 (1992). Race, religion, national origin, disability, sexual orientation, and socioeconomic status are outside the scope of the Task Force's mission, but are included here to reproduce the Judicial Code in its original form.

5. The Missouri Supreme Court should prepare a Courtroom Conduct Handbook for judges, attorneys, and court personnel, similar to that recently adopted by the Florida Supreme Court and Florida Bar.

6. The Missouri Supreme Court should order gender neutral language to be used in all court rules, court publications, forms, manuals, correspondence, jury instructions, etc.; should encourage judges to utilize gender neutral language; and direct circuit clerks and court administrators to assist in these efforts.

7. The Missouri Supreme Court should advise circuit clerks and court administrators of the importance of compliance with RSMo. § 494.415 (1986) regarding jury selection.

8. The Missouri Supreme Court should aid the courts in exploring ways to improve security in the courthouses and encourage judges, circuit clerks, and court administrators to explore ways to improve security in the courthouses.

9. The Missouri Supreme Court should aid the courts in exploring ways to provide on-site child care or subsidized off-site child care for jurors, witnesses, litigants, and court employees. It should also encourage judges, circuit clerks, and court administrators to explore ways to provide such child care.

10. The Missouri Bar should develop and provide educational programs to sensitize attorneys to the issues of gender bias and sexual harassment of attorneys, litigants, witnesses, court personnel, and judges.

11. The Missouri Bar should work with the Missouri Supreme Court to amend the Missouri Rules of Professional Conduct for attorneys to include a Disciplinary Rule prohibiting gender biased conduct in the courtroom.

12. The Missouri Bar should work with the Missouri Supreme Court to develop a courtroom conduct handbook.

13. The Missouri Bar should promote legislation requiring gender neutral language in all Missouri statutes.

E. TREATMENT OF COURT PERSONNEL

1. Identical to Section D., No. 1.

2. The Missouri Supreme Court should direct the State Courts Administrator and all courts to provide gender neutral job descriptions; enforce job requirements without regard to gender; stress gender neutral hiring and promotion; and collect and maintain date regarding applications, hiring, promotion, salary, and terminations with regard to gender.

3. The Missouri Supreme Court should direct the State Courts Administrator and all courts to review salaries of all court employees by gender; rectify any inappropriate salary differentials; and implement a system of regular performance and salary reviews.

4. The Missouri Supreme Court should develop and require training programs for circuit clerks and court personnel on equal employment, sexual harassment, family and medical leave, and other topics that disparately impact upon male and female court employees.

5. The Missouri Supreme Court should develop and provide educational programs for judges, attorneys, and court personnel addressing issues of gender bias and sexual harassment.

6. The Missouri Supreme Court should advise all court employees of the prohibitions against gender bias and sexual harassment set forth in Title VII of the 1964 Civil Rights Act and advise all covered employees of the policies articulated in Missouri Supreme Court Administrative Rule 7 and Missouri Supreme Court Administrative Policy No. C-7. It should also issue a memo to all court employees explaining the rules, defining the different types of sexual harassment, and stating that such behavior is illegal and can lead to termination.

7. The Missouri Supreme Court should encourage all courts with employees not subject to Administrative Rule 7 to adopt standardized fair employment policies and procedures, with particular emphasis on equal employment goals, sexual harassment, family and medical leave, and flexible work schedules. All courts should be required to promulgate written policies that accord with these standards.

8. Identical to Section D., No. 3.

9. Identical to Section D., No. 4.

10. The Missouri Supreme Court should encourage all courts to provide family and medical leave, for both men and women employees, for natural birth and adoption; for the care of a child, spouse, or parent; and for the worker's own serious health conditions in conformance with the new federal Family and Medical Leave Act. The Missouri Supreme Court should review Missouri Supreme Court Administrative Rule 7 regarding maternity leave and Missouri Supreme Court Administrative Policy No. C-7 regarding family leave to ensure conformance with the new Family and Medical Leave Act and advise all covered employees.

11. Identical to Section D., No. 5.

12. Identical to Section D., No. 8.

13. Identical to Section D., No. 9.

14. The Missouri Bar should develop and provide educational programs to sensitize attorneys to the issues of gender bias and sexual harassment of court personnel.

15. Identical to Section D., No. 11.

16. Identical to Section D., No. 12.

F. JUDICIAL SELECTION

1. The Missouri Supreme Court should by rule[4] provide for the mandatory professional training of Missouri Plan judicial commissioners. The program should be offered annually and should cover such relevant issues as roles, responsibilities, and procedures of the commissioners; interviewing methods; criteria for evaluating candidates; recent developments in other states with similar commissions; gender and racial bias awareness; information on the state of the judiciary; and a discussion on recruiting methods, including recruiting of qualified women and minority candidates.

2. The Missouri Supreme Court should by rule promulgate a detailed procedures manual for use by members of the Missouri Plan judicial commissions similar to The Missouri Bar Special Committee Proposed Manual, which is patterned after the American Judicature Society Handbook for Judicial Nominating Commissions. The manual should articulate written criteria by which to screen all judicial applicants regardless of gender; guidelines for application forms; guidelines for recruiting, interviewing, and evaluating applicants; guidelines for record keeping of applicants by gender and race; rules of communication; and ethical rules.

3. The Missouri Supreme Court should by rule adopt a uniform application form for Missouri Plan judicial applicants requesting information emphasizing judicial qualifications and precluding questions that might reflect gender bias.

4. The Missouri Supreme Court should adopt Cannon 2C of the 1990 A.B.A. Model Code of Judicial Conduct for judicial applicants and judges. Canon 2 states: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." Canon 2C states: "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of sex, race, religion or national origin.[5]

5. The Missouri Supreme Court should promulgate rules of ethics for Missouri Plan nominating commissioners requiring that all written communications received by an individual Missouri Plan commissioner regarding an applicant shall be forwarded to the other commissioners; that all oral communications shall be reduced to writing and forwarded to other commissioners; that all such communications shall be deemed confidential and shall not be disclosed to anyone outside the commission; and that commissioners shall not initiate or receive communications directly or indirectly with or from the Governor or representatives of the Governor about candidates prior to the submission of the final three nominees to the Governor. The rules of ethics for Missouri Plan nominating commissioners should further require impartiality, confidentiality, and sensitivity to conflicts of interest, and they should discourage membership by commissioners in clubs or organizations that invidiously discriminate on the basis of gender.

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[4]This recommendation and most of the following recommendations can be implemented by changes in Supreme Court Rule 10. See proposed rules in Missouri Bar Special Committee Proposed Manual at 14-27.

[5]Race, religion, and national origin are outside the scope of the Task Force's mission, but are included here to reproduce the Model Code in its original form.

6. The Missouri Supreme Court should by rule direct the members of Missouri Plan judicial nominating commissions to conduct group interviews of all judicial applicants.

7. The Missouri Supreme Court should by rule provide a mechanism for publicity of vacancies for Missouri Plan judgeships, interim appointments, and lawyer positions on the nominating commissions. It should also affirmatively promote diversity among applicants.

8. The Missouri Supreme Court should explore with The Missouri Bar, the General Assembly, and the Governor ways to increase diversity in the makeup of the judicial nominating commissions.

9. The Missouri Supreme Court should advocate the use of merit nominating commissions for nominations of interim judges for elective judicial positions.

10. The Missouri Bar should actively promote and encourage gender diversity in the judiciary.

11. The Missouri Bar should offer informational programs on the appointment and elective methods of selecting judges in Missouri and programs on how to deal with these processes.

12. The Missouri Bar should explore ways to improve diversity in attorney elections that would increase the participation of women on Missouri Plan nominating commissions.

13. The Missouri Bar should urge the Governor to increase the gender diversity in the judiciary through interim appointments for elective judgeships and Missouri Plan appointments.

14. The Missouri Bar should urge the Governor to appoint women lay commissioners to Missouri Plan judicial nominating commissions to advance equal opportunity in the nominating process.

15. The Missouri Bar should urge the Governor to utilize nominating commissions for interim appointments for elective judgeship positions.

G. ADDENDUM ON HOW RACE AFFECTS THE ADMINISTRATION OF JUSTICE

1. The Missouri Supreme Court should establish a Task Force on Race and Justice to conduct a study of whether racial bias exists in the administration of justice in Missouri, and, if so, what steps should be taken to remedy it.

2. The Missouri Bar should develop and provide educational programs to sensitize attorneys, judges, and court personnel to the issues of racial bias in the courts.

Submitted by

THE MISSOURI TASK FORCE ON GENDER AND JUSTICE

to the Executive Council of the Missouri Judicial Conference
March 1993

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